

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 6 9 18 AM '96

MM Docket No. 96-114

In the Matter of

Amendment of Section 73.202(b). RM-8786
Table of Allotments,
FM Broadcast Stations.
(Fort Bragg and Willits, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 3, 1996;

Released: June 5, 1996

Comment Date: July 29, 1996

Reply Comment Date: August 13, 1996

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Henry Radio Company ("petitioner"), licensee of Station KLLK-FM, seeking the reallocation of Channel 228B from Fort Bragg to Willits, California, as that community's first local commercial FM service,¹ and modification of its license accordingly.² Petitioner stated its intention to apply for Channel 228B at Willits if it is reallocated, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd

7094 (1990). In support of its proposal, petitioner advises that it has been unable to locate a suitable transmitter site east of Fort Bragg that would permit Station KLLK-FM to maximize its signal coverage to Fort Bragg and Mendocino County. In this regard petitioner asserts that the rugged mountainous terrain between Fort Bragg and Willits virtually nullifies its ability to locate a site capable of allowing Station KLLK-FM to expand to its full coverage potential while simultaneously complying with the requirements of Section 73.315 of the Commission's Rules to provide a 70 dBu signal over Fort Bragg. Petitioner states that the requested reallocation to Willits (population 5,027)³ which is mutually exclusive with the existing allotment of Channel 228B at Fort Bragg (population 6,078), would enable it to maximize the Class B coverage potential of Station KLLK-FM. The distance between the two communities is 35.3 kilometers (22 miles), whereas a distance of 241 kilometers (150 miles) is required between Class B co-channels. Petitioner advises that Willits is an incorporated community containing a population of 5,119 residents.⁴ Additionally, petitioner reports that Willits has a city manager/counsel form of government, a police department, a unified school district, as well as a library and a hospital. Additionally, petitioner advises that Willits provides community services as well as emergency and educational assistance to a larger area that is presently devoid of local nighttime radio service.⁵

3. In further support of its proposal, petitioner states that the reallocation of Channel 228B to Willits is in the public interest as it would provide a first local commercial FM service to Willits and will not deprive Fort Bragg of its sole local aural transmission service.⁶ Since petitioner intends to relocate its transmitter, it based its gain and loss projections on its currently licensed Class A operation at Fort Bragg with its predicted maximum Class B operation at Willits. However, as indicated *supra*, since Station KLLK-FM has been modified previously to operate as a Class B facility, we have calculated the gain and loss areas within the 1 mV/m signal coverage contours using Class B parameters at each community. Accordingly, we have determined that the reallocation would result in a loss area of 502 sq. kilometers containing 2,623 persons, and a gain area of 3,628 sq. kilometers containing 34,483 persons. Further, we have determined that all of the loss area receives five

¹ Noncommercial educational Station KZYZ(FM), Channel 218B1 (File No. BLED-950501KA) is licensed to Willits, as is petitioner's Station KLLK(AM), which operates fulltime. With respect to Station KZYZ(FM), petitioner advises that that broadcast facility repeats the programming of Station KZYX(FM), Channel 214B1, Philo, California, and therefore provides no local programming to the Willits area. However, according to the Commission's records, although Station KZYZ(FM) was granted a waiver of the Commission's main studio rule, 47 C.F.R. §73.1125, to operate as a "satellite" of Station KZYX(FM), the primary obligation of a broadcast licensee, including a satellite station, is to serve the local problems, needs and interests of its community of license.

² Station KLLK-FM currently operates on Channel 244A. However, its license was modified to specify operation on Channel 244B in MM Docket No. 90-599. See 6 FCC Rcd 5817 (1991). Subsequently, Station KLLK-FM's license was modified to specify operation on Channel 228B in lieu of Channel 244B at Fort Bragg in MM Docket No. 92-86 to accommodate a rule making proposal at Paradise, California. See 7 FCC Rcd 5939 (1992).

³ Population figures were taken from the 1990 U.S. Census.

⁴ Petitioner advises that the statistical and demographic in-

formation provided in its petition is based upon information published by the Willits Chamber of Commerce.

⁵ In this regard, petitioner states that Station KLLK(AM), Willits has a nighttime interference free contour of 10.03 mV/m that extends only slightly beyond the city limits. Although petitioner claims that Laytonville, Longvale and Dos Rios are a few of the communities that would receive primary service from its reallocation proposal, our engineering analysis reveals that those localities are served by the predicted Fort Bragg Channel 228B 1 mV/m contour as well as by other area stations.

⁶ Fort Bragg is also served by Station KOZT(FM), Channel 237B1, Station KSAY, Channel 253B1, and fulltime AM Station KDAC. Although petitioner also attributed the broadcast facilities licensed to the contiguous community of Mendocino to Fort Bragg, based upon the local recognition of both communities as a single market, we will not credit the Mendocino broadcast services to Fort Bragg. In evaluating the level of local transmission services remaining in a community, we consider only those broadcast facilities authorized to the community. Therefore, the principal community contours of services licensed to Mendocino that penetrate Fort Bragg, are considered as reception services only.

fulltime aural services. Moreover, the majority of the gain area receives a multiplicity of fulltime aural services, except for an area of 200 sq. kilometers containing 4,196 persons which receives four full-time aural services. Additionally, we note that Willits is not located within, nor adjacent to, an urbanized area.

4. In consideration of the above, we believe the proposal to reallocate Channel 228B from Fort Bragg to Willits, California, warrants further consideration since it could provide Willits with an additional local transmission outlet, thereby equalizing the level of service between the two communities, and could permit Station KLLK-FM to maximize its signal coverage at Willits.

5. As the petitioner's modification request at Willits is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify Station KLLK-FM as requested without entertaining competing expressions of interest in the use of Channel 228B at Willits, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Channel 228B can be allotted to Willits, California, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules utilizing city reference coordinates 39-24-36 and 123-21-12, as requested by the petitioner.

7. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Fort Bragg,	228B, 237B1,	237B1, 253B1
California	253B1	
Willits, California	--	228B

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **July 29, 1996**, and reply comments on or before **August 13, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard M. Riehl, Esq.
Haley, Bader & Potts, P.L.C.
4350 North Fairfax Dr.
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Arlington, VA 22203-1633

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's

Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.